

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

**PROPOSED
ADMINISTRATIVE ORDER**

Saxon Oil Company, Inc.)

Ken Story Groceries & SS (The Bottle))

UST Facility ID No. 14327-081-006299)

UST Release Incident No. UST94-12-28 and)

UST94-12-29)

Opelika, Lee County,)

No. _____

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (ADEM Admin. Code r.) promulgated pursuant thereto, the Alabama Department of Environmental Management (the "Department" or "ADEM") makes the following findings:

1. Saxon Oil Company, Inc. (hereinafter the "Owner") was the registered owner of a regulated underground storage tank (UST) system located at Ken Story Groceries & SS (The Bottle), US 280 & Hwy 147, Opelika, Lee County, Alabama (hereinafter "Facility"), designated as ADEM Facility I.D. Number 14327-081-006299, at the time of discovery of a release of regulated substances from the UST system.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of Federal Environmental Law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.

4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).

5. Based upon an inspection of the Facility and/or a review of records relating to the Facility, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.35(1), before permanent closure of any UST the owner must measure for the presence of a release and submit a report of the assessment to the Department within forty-five days of initiating the closure.

7. Pursuant to ADEM Admin. Code r. 335-6-15-.35(2), if contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered by the closure assessment, or by any other manner, the UST owner must begin corrective action in accordance with ADEM Admin. Code rs. 335-6-15-.24 to 335-6-15-.31.

8. On March 30, 1995, the Department issued a requirement to the Owner to perform a secondary investigation pursuant to ADEM Admin. Code r. 335-6-15-.28 and to submit a plan for the investigation to the Department.

9. On October 20, 1995, the Department issued a "Notice of Delinquency" to the Owner requiring the submittal of the secondary investigation plan.

10. On April 27, 2005, the Department issued a "Notice of Violation" to the Owner citing the failure to submit a secondary investigation plan as required.

11. On May 21, 2010, the Department issued a second "Notice of Violation" to the Owner citing the failure to submit a secondary investigation plan as required.

12. The Owner has refused or otherwise failed to submit a secondary investigation plan in violation of ADEM Admin. Code r. 335-6-15-.28.

13. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl.Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment;

such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

14. In arriving at the civil penalty assessed in this matter, the Department has considered the following:

(a) Seriousness of the Violation:

The Owner did not undertake timely investigation and/or corrective actions in response to a release. The violation impedes the Department's regulatory authority over USTs for threats to public health, safety and the environment.

(b) Standard of Care:

The Owner did not exhibit a standard of care commensurate with applicable regulatory requirements.

(c) Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

(d) Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

The Department is unaware of any efforts the Owner has taken to minimize or mitigate the effects of the violation(s) upon the environment.

(e) History of Previous Violations:

The Owner does not have a history of previous violations.

(f) Ability to Pay:

The Owner has not alleged an inability to pay the civil penalty.

(g) Other Factors:

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$1,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see Attachment A):

Violation Type

Penalty Range for Violation Type

Failure to conduct Secondary \$100 - \$25,000
Investigation and Corrective
Action

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the issuance of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of \$1,000.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days after the issuance of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, within thirty days of the issuance of this Administrative Order, the Owner shall submit to the Department a secondary investigation plan prepared in accordance with ADEM Admin. Code r. 335-6-15-.28.

C. That, within ninety days of acceptance of the secondary investigation plan by the Department, the Owner shall submit to the Department a report of the secondary investigation conducted in accordance with ADEM Admin. Code r. 335-6-15-.28.

D. That, if required by the Department based upon a review of the secondary investigation report, the Owner shall undertake additional investigations and corrective actions in accordance with ADEM Admin. Code r. 335-6-15-.24 to 335-6-15-.31, and shall continue corrective actions there under until notified by the Department in writing that no further actions are required.

E. That, the Owner shall otherwise comply with all applicable requirements for each UST and shall continuously remain in compliance therewith each and every day thereafter until such time as the UST is permanently removed from service pursuant to ADEM Admin. Code r. 335-6-15-.34.

F. That, should any provision of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

G. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

H. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

I. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the _____ day of _____, 2011.

Lance R. LeFleur
Director
Alabama Department of
Environmental Management

ATTACHMENT A

Penalty Calculation Worksheet

Ken Story Groceries & SS (The Bottle)

Highway 280 & State Road 147

Opelika, Lee County, Alabama

Facility I.D. No. 14327-081-006299

Owner: Saxon Oil Company, Inc.

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code rules 335-6-15-.28 and .29 require that a Secondary Investigation and Corrective Action be performed where required by the Department in response to a release of regulated substances.	1	\$1,000	\$0	\$0
Totals:	1	\$1,000	\$0	\$0

Economic Benefit*: \$0

Mitigating Factors: \$0

Ability to Pay*: \$0

Other Factors: \$0

**Total Civil
Penalty: \$1,000**

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors